

**OPINION
76-104**

February 18, 1976 (OPINION)

Mr. Richard J. Wolfert
State Librarian
North Dakota State Library
Bismarck, North Dakota 58505

Dear Mr. Wolfert:

This is in response to your letter of 9 February 1976, requesting an opinion as to whether certain moneys that may be received by the State Library Commission are "institutional income" within the meaning of Section 54-16-03 of the North Dakota Century Code.

You inform us that the State Library Commission functions as a state clearinghouse for selected services to public libraries operated by cities and counties and to libraries operated by public and private colleges and universities. You indicate that these services include teletype, communication, data processing, microfilming, publications, and document delivery of library materials from out-of-state libraries. You indicate that twenty libraries are billed by the State Library Commission semiannually for teletype and documents delivery services, and libraries are also billed as necessary for data processing, microfilming and publications. You state that these services are performed by other state agencies in North Dakota and Minnesota, under contract with or request of the State Library Commission. You indicate that the State Library Commission is billed for these services from these agencies, and in turn the State Library Commission bills the local libraries for the State Library Commission services.

You indicate that under current procedure the local libraries draw a check to the order of the agency originating the service, and mail it to the State Library Commission. The State Library Commission forwards the checks to the agency which has billed the State Library Commission. You indicate that this procedure requires the State Library Commission to hold many checks made out to many agencies for varying periods of time.

You indicate that you proposed petitioning the Emergency Commission to enable the State Library Commission to deposit checks received from local libraries for services rendered and allow the State Library Commission to draw a check in payment for the service to the originating agency. You indicate that the Executive Budget Office has requested the State Library Commission to obtain an opinion as to whether the State Library Commission is subject to the provision in Section 54-16-03 of the North Dakota Century Code, that: "the emergency commission shall not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the legislative assembly" before the petition to the Emergency Commission is presented.

You state that the biennial budget appropriation for the State

Library Commission includes \$5,000.00 in miscellaneous income. You state further that the petition to the Emergency Commission will include an increase of \$56,125 of miscellaneous income.

In the context of the statutory language here considered, it is obvious that the term "institutional" is used as an adjective, modifying and limiting the term "income." In the broadest sense, even the state of North Dakota is an "institution" on which basis we must conclude that a narrower definition was intended than any money passing through the hands of the state, its agencies, departments and divisions.

In "Webster's New International Dictionary" we find among other definitions of the term, the following:

- d. An established or organized society or corporation, an establishment, exp., one of a public character, or one affecting a community; a foundation; as a literary institution, a charitable institution, the Smithsonian Institution; also a building or the buildings occupied or used by such organization."

We find the term "institutions" frequently used in our constitutions and statutes. Thus, Section 215 of the North Dakota Constitution, under the heading "Public Institutions" lists such institutions as the seat of government, the state university and school of mines, the agricultural college, various normal schools, school for the deaf and dumb, the state training school, state hospital, the institution for the feeble minded, etc., along with some listing of the land endowments therefor. (NOTE, also the provisions of the enabling act endowing such institutions with land grants and Article IX of the constitution providing for the administration of some of these endowments for some of these institutions.) We note also in this respect the provisions of Article 54 (e) of the North Dakota Constitution, providing that the State Board of Higher Education shall have the control of the expenditure of the "funds belonging to, and allocated to such institutions and also those appropriated by the legislature."

We note also in this respect, Chapter 15-67 of the 1975 Supplement to the North Dakota Century Code, the "Uniform Management of Institutional Funds Act." While the definitions contained in Section 15-67-01 thereof by their terms are limited to application in that chapter, the definition of "institutional fund" in Subsection 6 thereof does appear to be a fairly standard definition. We note with some interest that the common school fund as set out in Section 153 of the Constitution is specifically excepted from the operation of the chapter in express terms, whereas, the trust funds for the university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal schools, etc., as set out in Section 159 and for capital buildings, etc., are not specifically excluded.

We would note further that Section 15-67-04 of the 1975 Supplement does indicate that these institutional funds can as described therein be invested and reinvested, apparently for the purpose of producing income.

We would have no problem in recognizing that the "income" produced by these "institutional funds", and such as those set up by Sections 153 and 159 of the North Dakota Constitution, would be recognized (within constitutional limits) as "institutional income," within the meaning of Section 54-16-03 of the North Dakota Century Code. We do not believe it necessary at this time to consider in further detail what other moneys, fees, etc., appertaining to endowed or unendowed institutions of the state might fall within this statutory provision.

While we would readily recognize that the moneys referred to in your inquiry could properly be considered a "cash flow" appertaining to the State Library Commission, it is extremely difficult to consider them to be "income" belonging to the state or State Library Commission. Possibly, if a "profit" is realized by the State Library Commission, by its purchase of such services at a wholesale rate, and its resale of same at a retail rate, such portion of the moneys as constituted such "profit" might be considered an "income".

In view of all of the above it is our opinion that no part of the moneys received by the State Library Commission under the project you describe constitutes "institutional income" within the meaning of the quoted sentence of Section 54-16-03 of the North Dakota Century Code.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

ALLEN I. OLSON

Attorney General